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CONSTITUTIONAL CHANGES WITHIN
THE UN SINCE 1945

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ANALYZE THE VARIOUS INFORMAL CONSTITUTIONAL CHANGES WITHIN THE UN SINCE 1945, SET AGAINST THE "INTENTIONS" OF THE CHARTER'S FOUNDING FATHERS. DO THESE CHANGES QUALITATIVELY CHANGE THE CHARACTER OF THE ORGANIZATION?

by

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In the aftermath of the Second World War, it was inevitable that the victorious powers would for the second time in this century seek lasting peace through an international organization. Such attempts to control and maintain the peace and security of the world have been regular occurrences since the time of Napoleon and the Holy Alliance. The concept underlying this attempt would appear to be based on the idea that a unity acquired during the stress and strain of war can and must be retained during times of peace, and that the enemy at a given time will remain the enemy. This is a rather rigid view of the relations of nations and one which has been proven to be false. Unity is built in times of optimism at the height of victory but must last through the depressions and strain of peace when there is no common bond with which to unite the members.

During times of crisis the bond is clear-cut. Each member of the alliance has a well-defined goal in the elimination of the designated enemy and the restoration of peace.

After the crisis, in this case the fall of the German and Japanese schemes of expansion, one must search more diligently for the adhesive with which to hold the nations together. Throughout recent history, the victorious combinations have sought to insure the peace of the world by retaining that unity which won it. When, however, there is

no longer a common enemy against which the nations must combine to protect their very existence, the nations tend to fly apart in pursuit of their various and often contradictory interests. This is the basic problem encountered by those with whom are charged the task of creating an entity which will maintain the international peace and security. They must create an entity which will be forged during the heat of battle but which must survive in that most dangerous time of all--a time of peace. These men must provide that magic adhesive which will prevent the many nations from going off on their particular ways and thereby colliding to produce another holocaust.

Following the First World War, the nations sought the answer in international organization in the form of the League of Nations. This Organization, it is true, had many weaknesses which finally led to impotency in the face of constant threats to peace, but it pointed out the way. Many scholars have noted that it was in the recognition of such weaknesses that the strength of the League lies. The League was a relatively realistic organization for its time in a world of jealously sovereign nations and their separate interests. Its founders recognized the limitations imposed by this world. For this reason, it was essentially a weak means of maintaining the international peace and finally no means at all. The experience of the brief life of the League of Nations was of vast importance for the creation of the United Nations following the Second World War for three reasons. First, the League indicated the need for such an organization in the maintenance of peace. The mere fact that it failed to accomplish this itself was interpreted not as a denial of the entire idea but rather in terms of

weaknesses in its construction which could be remedied. "...the United Nations does not represent a break with the past, but rather the continued application of old ideas and methods with some changes deemed necessary in the light of past experience."[1] Second, it further accented the need for cooperation between the great powers through such an organization. A major problem throughout the entire history of the League was that of the "empty chair." This included the chair of the United States throughout its entire existence, and the Soviet Union and Germany during a portion of its lifetime. The framers of the United Nations Charter learned this lesson well. Third, the League, although interested mainly in collective security functions, revealed a growing need for economic and social activities "to employ international machinery for the promotion of the economic and social advancement of all peoples."[2]

The League of Nations was a testing ground for international organization. Many of the provisions of the League have not been improved on to any extent because they were rooted in the basic facts of international life--that is that nations are sovereign in their conduct of international relations and therefore not amenable to control by any organization. The League was necessary for the creation of the United Nations Organization.

The Charter of the United Nations can be said to be similar to the League Covenant in many ways. What is more significant, however,

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1. Leland M. Goodrich, "From League of Nations to United Nations", International Organization (February 1947) 1:5
2. Covenant of the League of Nations, Preamble.

is to be found in the several differences which play a large part in the subsequent development of the Organization.

The first of these differences and a problem which loomed large from the start of the Charter creation process until the final draft was formulated at San Francisco in 1945 was signed and ratified was the problem of voting procedure. The voting procedure of the League of Nations was based on the time-honored principle of unanimity in matters of importance, especially in the maintenance of international peace and security and therein lies a key to its inability to act decisively. Under Article 15, Paragraph 1 is found the following provision: "If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council."[3] This provision if taken alone and at face value would appear to give the Council much power and authority in such settlement. It is however complicated by the voting provisions found in Article 5, Paragraph 1 "except where otherwise provided in this Covenant or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."[4] This provision of unanimous voting in the Council greatly hampered the process of rendering a decision in the settlement of disputes among the Member Nations. It is further complicated by Paragraph 5 of Article 4 which reads: "Any Member of the

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3. Covenant of the League of Nations, Article 15, Paragraph 1.
4. Ibid., Article 5, Paragraph 1.

League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League."[5] Thus the League found itself generally unable to take any decisions on matters affecting the maintenance of international peace and security. The value of such discussion and consideration as remained lay in the realm of political pressure applied to the disputant members by the great powers present as permanent members of the Council. "In the thirty disputes and more dealt with by the League Council under the settlement provisions, certain principles of action emerged with clarity. Preeminent was the principle that its action was likely to be most effective when directed to persuading both parties to agree to a settlement rather than adopting recommendations and trying to enforce compliance..."[6] This technique was guarded by the need for unanimity in the League.

The framers of the Charter saw the unanimity requirements of the Covenant as a major weakness which must be remedied in order for the organization to function. One might question whether the results furthered the drive toward majority rule but the intention was there. The voting requirements of the Security Council consisted of a somewhat ingenious combination of the unanimity and the majority principles. These requirements as found in Article 27 call for an affirmative vote of seven out of eleven members of the Security Council except that on substantive matters the vote shall be "an affirmative vote of seven

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5. Ibid., Article 4, Paragraph 5.
6. Julius Stone, Legal Controls of International Conflict, (Second impression, revised) Rinehart & Company, Inc. New York, 1959 p. 171.

members including the concurring votes of the permanent members."[7] Procedure has seen fit to expand this substantive category thereby expanding the number of issues on which the unanimous vote of the five permanent members is required.

A second difference between the Covenant and the Charter can be found in the composition of their respective Councils. The Council of the League exhibited great fluidity of its membership both in terms of permanent members and elected members. The Security Council of the United Nations rather than being fluid is quite rigid as far as its permanent membership is concerned. Article 23 goes so far as to specify the permanent members by name thus the only means by which either the permanent membership or the numbers of elected members can be changed is by amendment to the Charter.

A third major difference found in the two instruments relates to the enforcement powers given the Councils in the performance of these functions. The Council of the League, besides being troubled by the need for unanimous votes, was also troubled by its inability to enforce the peace as against the use of force by one or more members. In this case, through interpretation of the Covenant by the member-nations, the procedure was for each member to decide for itself whether or not a member had "resorted to war in disregard of its covenants" and therefore whether appropriate actions should be taken by that nation against the member. The role of the Council was "to recommend to the several governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the

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7. Charter of the United Nations, Article 27, Paragraph 3.

armed forces to be used to protect the covenants of the League."[8] A major goal of the Charter was to create a centralized system of enforcement by giving the Security Council the power to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to "make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."[9] The framers of the Charter did not stop with this provision, however. They made provisions for strong action on the part of the Security Council and even went so far as to provide for the establishment of armed forces to "enable the United Nations to take urgent military measures."[10] Under Article 25, all members of the organization "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."[11] The Security Council of the United Nations was intended to be in a position to enforce peace. The United Nations was to be like the League of Nations--it could hardly be otherwise--in that it would try persuasion in case of a dispute and next might try economic sanctions, but it was to have both the authority and the power to use military sanctions -- force in the most conventional sense.

An additional difference to be found is in the projected role of the Secretary-General although even the Charter failed to anticipate the evolution of this position to its present stature in the world. The Covenant provided for a Secretary-General to perform the

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8. Covenant of the League of Nations, Article 16, Paragraph 2.
9. Charter of the United Nations, Article 39.
10. Ibid., Article 45.
11. Ibid., Article 25.

administrative work of the Organization. There was no mention of any possible political role. The Charter made a small opening in this field by including in Chapter XV a provision for the Secretary-General "to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."[12]

The preceeding listing has only been a general one consisting of some of the major and basic problems and differences which resulted from an attempt on the part of the framers of the Charter to profit from the "mistakes" as well as from the evolutionary process of the League. They will figure prominently in the discussion of the evolution and constitutional changes of the Organization itself for in several cases they have been inoperable from the beginning.

It is now appropriate to draw some conclusions on the character of the Organization which was created in San Francisco in 1945. The purposes of the United Nations as listed under Article 1 of the Charter include the maintenance of international peace and security, the development of friendly relations among the various nations based on the principles of equal rights and self-determination and the achievement of international cooperation in problems of economic, social, cultural or humanitarian character. Taking into consideration the evolution of the League system and the developments which led to the creation of the Charter, it becomes clear that while the work to be performed by a great international organization like the United Nations will reach

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12. Charter of the United Nations, Article 99.

out into many fields of human endeavor, the central and most fundamental of its many tasks will be that of preserving international peace and security. The Dumbarton Oaks proposals concerned themselves almost entirely with these questions and the bulk of the resulting Charter is also involved in this aspect of international relations. "The fundamental goal of the United States was to establish a collective organization capable of maintaining international peace by placing primary control over security questions in the hands of the great powers. A secondary goal was to begin about where the League left off in the promotion of various economic and social programs which many thought had been the most constructive contributions made by the League."[13]

In the maintenance of international peace and security, the Organization as outlined at San Francisco reveals several distinct characteristics. The Charter distinguishes between two aspects of this function: pacific settlement of disputes under Chapter VI and enforcement action or action with respect to threats to the peace, breaches of the peace and acts of aggression under Chapter VII.

Both the General Assembly and the Security Council are given important roles in the process of peaceful settlement of such disputes as may arise. The role of the General Assembly is one of discussion, consideration, and with the exception of matters currently being dealt with by the Security Council, recommendation. The General Assembly, moreover, may contribute to peaceful change by recommending measures

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13. H. Field Haviland, Jr., The Political Role of the General Assembly, Marstin Press, New York, 1951, p. 11.

under Article 14 for the adjustment of any situation regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations.

The Security Council, in contrast to the General Assembly, is to be concerned not with the general welfare as a whole but specifically with the maintenance of the international peace and security, for which it has been given primary responsibility. It has been given broad powers to enable it to fulfill its responsibilities, but in the field of peaceful settlement the Security Council has no authority to impose terms of settlement. Under Chapter VI, the Security Council has considerable discretion in the methods it might use to bring about a satisfactory solution for a situation or dispute which might menace the peace. Included in these methods are the authority to recommend methods for effecting such settlement, or even under Article 37, the authority to propose the actual terms of such a settlement. Thus in the case of pacific settlement of disputes, there is a definite overlapping in the powers of the two major organs of the United Nations Organization, that is in the power to recommend as opposed to the power to impose terms of settlement.

The Organization, however, deals with another aspect of the maintenance of peace--enforcement action in cases of breaches of the peace or threats to the peace. It is in this line that the Charter gives the sole authority to the Security Council. The Charter is quite explicit in its considerations of the uses of force on the international scene. Being mainly concerned with the maintenance of international peace and security it seeks to limit the use of force by the nations of

the world through means of developing a system by which the main use of force is to be exercised by the organization itself, or failing that under the specific license of the organization and the Charter. The means for employing the force used by the Organization are made available to the Security Council alone. Resort to such means is conditional upon a prior determination that a threat to the peace exists, or that a breach of the peace or act of aggression has occurred. This determination is for the Security Council to make and no other organ of the United Nations is competent to make it. Once this determination has been made by the Security Council, it has rather wide discretion on the measures to be taken. Under Article 41 which lists measures not involving the use of armed force, one finds the possible use of: "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."[14] Should these measures not be deemed adequate for the situation, the Security Council may, under Article 42 "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."[15] The Charter provides the Council with a Military Staff Committee to advise and assist it in these matters.

In any consideration of the enforcement functions of the Organization

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14. Charter of the United Nations, Article 41.
15. Ibid., Article 42.

the word armed means [illegible] by which [illegible] of force [illegible] exercised by the organization itself, or rather that under [illegible] the [illegible] and [illegible]. The means [illegible] the force [illegible] are made available to the security Council alone. Account to such means is conditional upon a prior determination that a threat to the peace exists, or that a breach of the peace or act of aggression has occurred. The determination is for the Security Council to make and no other organ of the United [illegible] is competent to make it. Once this determination has been made by the Security Council, it has rather wide discretion on the measures to be taken. Minor threats in which lives sometimes are involved [illegible] one or armed forces, one finds the possible use of complete or partial interruption of economic relations and of rail, sea, air, postal, telegraph, radio, and other means of communication, and the severance of diplomatic relations.[illegible] Should these measures not be deemed adequate for the situation, the Security Council may, under Article 42, take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of the United Nations. The charter provides that [illegible] with a military staff committee [illegible] it in these [illegible].

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through the Security Council two factors must be taken into account. First, the Security Council is controlled by the five permanent members who may exercise their veto right at any time under Chapter VII. That is to say a permanent member may not only pose the veto on a determination of a threat to or breach of the peace but may also veto any decision of measures to be taken to restore the peace. Article 39 contemplates at least two distinct voting processes. This can be traced directly to the feeling that there could be no action taken contrary to the wishes of a great power without sacrificing the organization. The second factor lies in those provisions which seek to set up armed forces for the use of the Security Council. These provisions call first for special agreements between the Members and the Security Council by which they undertake to make available "armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."[16] Unless and until such agreements are negotiated and ratified, the Security Council is technically unable to fulfill the whole of its responsibilities under Article 42. The Charter, however, provides for this void through Article 106 "the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France shall in accordance with the provisions of paragraph 5 of the Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security."[17] One must remember that

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16. Ibid., Article 43.
17. Ibid., Article 106.

[illegible]

this scheme was intended to be but a temporary expedient.

What can be concluded on the subject of enforcement actions of the United Nations? Such actions by the terms of the Charter lie almost entirely in the hands of the five permanent members of the Security Council. The Big Five control the decision making process, they form the Military Staff Committee and they constitute the interim measures to be used prior to the ratification of special agreements setting up a force for the Organization. The small nations have no role here. The General Assembly is quite specifically cut out of the enforcement process by Article 11, paragraph 2 which states: "any such question on which action is necessary shall be referred to the Security Council,"[18] and by Article 12, paragraph 1: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests."[19]

One final aspect of the peace functions of the United Nations needs to be considered. This relates to the duties of the Secretary-General. For the first time this position was given a political as well as an administrative role in an international Organization. Under Article 99 "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."[20] It was also proposed at the San

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18. Ibid., Article 11, Paragraph 2.
19. Ibid., Article 12, Paragraph 1.
20. Ibid., Article 99.

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Francisco Conference that this Article be amended to give the Secretary-General the right to bring such a question to the attention of the General Assembly as well but this proposal was rejected because it had already been decided that the Security Council should have the primary responsibility for the maintenance of international peace and security, and the amendment would violate this principle. This assignment of new responsibility in a political field is indicative of a rising feeling of confidence. This feeling was expressed by the First Committee at the San Francisco Conference: "The assignment of this authority to the Secretary-General manifests our deep trust in the Secretary-General to perform his tasks impartially and in the interests of the world at large."[21] Thus the position of the Secretary-General gained in stature over the same position in the League even before the Organization began to function.

This then is basically what was constructed at the San Francisco Conference in 1945. The new Organization was intended to overcome the faults of the League of Nations which were deemed responsible for its ineffectiveness in the face of world crisis. The United Nations was to be a centralized agency to insure as far as possible the solution of two main problems, "the problem of peace and the problem of improvement of conditions of mankind by international cooperation,"[22] whereas the League had operated entirely on a decentralized basis supported by the concepts of unanimity and voluntary use of force to uphold its principles.

The question now arises as to whether or not the Organization in 1964 is in all respects that Organization created in 1945 and if not,

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21. Documents of U.N.C.I.O., Volume 6, p. 243.
22. Ibid., p. 13.

[illegible]

how have the changes come about? When one is analyzing any organization, it is important to look at the basic instrument upon which it is organized for this reveals the outline of the purposes of the Organization and the measures which the Organization is to use to accomplish these purposes. One must remember however, that the basic instrument, in this case the Charter of the United Nations Organization, has been drafted at a certain time in history under certain conditions. These conditions are not static. They are dynamic by nature and no constitution which ignores this basic fact will long endure. For this reason such instruments tend to be general and ambiguous in order that the organization which they support can remain flexible in the face of changing circumstances. Few organizations remain the same over extensive periods of time and the United Nations Organization has been no exception. It was intended to develop through practice and it has done just this. At the time that the Charter of the United Nations was submitted to the Senate for consent on ratification, the President of the United States expressed this basic fact: "Improvements will come in the future as the United Nations gain experience with the machinery and methods which they have set up. For this is not a static treaty. It can be improved -- and, as the years go by, it will be -- just as our own Constitution has been improved."[23] This echoed the general intentions of the framers as expressed by Mr. Zeineddine of Syria: "The future action of the Organization and its members depends more on the support behind the provisions and the spirit

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23. Francis O. Wilcox and Carl M. Marcy, Proposals for Changes in the United Nations, Brookings Institution, Washington, D. C., 1955 p. 9.

as it demonstrates itself in practice, than upon the text itself."[24] In order to facilitate such necessary development of the Organization, it is necessary for one or both of the following characteristics to adhere to the basic instrument. In the first place, there must be a judicious balance of rigid with flexible provisions, major emphasis being on the latter. By flexible provisions are meant those provisions which are capable of rather wide interpretation without necessitating formal amendments. The second characteristic which lends to the development is a relatively flexible amending process. This becomes critical where the important provisions on which the life of the organization depends are rigid in structure rather than flexible. Whatever can be said about the Charter of the United Nations, it does not lend itself readily to formal amendments despite the attempts of the smaller powers at San Francisco to accomplish this.

The Charter is a multi-lateral treaty setting up an international organization. It is in reality a highly flexible instrument capable of far-reaching changes within the context of the treaty itself. Where there are rigid provisions in the Charter so that the only method of change is through formal amendment, it remains rigid and incapable of development and evolution within the organization as a whole, for the amending process is such that amendments can be included only with great difficulty. The United Nations Charter would have been better constituted for development to meet the current international system had the few inflexible provisions been made more flexible, but in this case one

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24. Documents of the U.N.C.I.O., Volume 6, p. 18.

[illegible]

questions whether the organization would have progressed beyond the planning stage. The inflexible provisions are in the main those without which the major powers of 1945 would not have seen fit to join the organization. These rights are zealously guarded through the amendment requirements.

The United Nations Organization has responded to the changes which have taken place in the realm of politics since 1945. The most basic of these changes is the breakdown of that unity of the five permanent members of the Security Council upon which the fate of the Organization and indeed of the world was thought to hinge. The period since 1945 has been witness to a protracted cold war situation with outbursts of heated conflicts in virtually every section of the world. The cold war has shattered the unity of the permanent members and with it the possibility that there can be agreement among them long enough to allow the Security Council to function as it was originally intended. "The United Nations has not settled the political struggle between the United States and the Soviet Union, though it is only honest to remember that the Charter assumes great-power unity and that the Security Council was not intended to mediate between great powers or to bring them to book."[25] Therefore the experience of the United Nations to date would seem to indicate that the early emphasis in discussions of the Charter on enforcement features was considerably overdone. Not only is it impossible, with the requirement of great power unanimity for Security Council decisions on substantive questions, to take enforcement action

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25. Eugene P. Chase, The United Nations In Action, McGraw-Hill Book Co. Inc., New York, 1950, p. 376.

against a permanent member of the Security Council, but it is unlikely that any action will be taken against a smaller state which has the protection and support of a permanent member. If the United Nations is to achieve the maintenance of international peace and security, it is clear that first emphasis must be placed on the improvement of relations between the permanent members of the Security Council, and upon preventive, not enforcement action. The United Nations has had to develop in its quest for peace after the collapse of what was considered a basic necessity in 1945.

The Constitution of the United Nations has been changed to meet this development in the international situation but not through formal Charter amendment. During the eighteen years of its existence, there is no record of an amendment reaching the final voting stage. This is true despite the provisions made in the Charter for a "General Conference of the Members of the United Nations for the purpose of reviewing the present Charter"[26] to be placed on the agenda of the General Assembly "if such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter."[27] Since the formal amending procedures are too rigid to allow the necessary changes or the political circumstances have not been conducive to their use, other ways and means have had to be found.

There are, in general, two ways by which the Charter of the United Nations has been subjected to changes which substantially affect its

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26. Charter of the United Nations, Article 109, Paragraph 1
27. Ibid., Article 109, paragraph 3.

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provisions though at the same time leave the text intact. These are: through non-implementation or non-application of certain provisions and through interpretation by the various organs and members.

In the first category of informal constitutional changes, one finds the very core of the United Nations collective security system. This system as mentioned previously is to be found in the provisions of Chapter VII which delegate to the Security Council the duty to determine the existence of situations in which enforcement or restoration action is necessary as well as the taking of remedial measures. Of interest in a consideration of informal changes by non-implementation are those provisions which set up armed forces for the use of the Security Council. These are found in Articles 43 and 47. These articles, in essence, establish a system of agreements by which the Member Nations make available to the Security Council specified contingents of their armed forces and other instrumentalities necessary for the application of forceful measures, invite those members not represented on the Council to participate in discussions leading up to decisions concerning the employment of contingents of that Member's armed forces,"[28] make available "national air force contingents for combined international enforcement action,"[29] and provide for the creation of a Military Staff Committee to plan, advise and assist the Security Council in the performance of its functions under Chapter VII. The Military Staff Committee under the Charter is to consist of "The Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the

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28. Ibid., Article 44
29. Ibid., Article 45

United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work."[30] The Military Staff Committee clearly has two functions under Article 47. They include advising and assisting the Security Council "on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments and possible disarmament."[31] An additional task of the committee, however, is the "strategic direction of any armed forces placed at the disposal of the Security Council."[32] The Committee can therefore partially function under the first of its duties regardless of the state of the agreements called for under Article 43 but the second duty depends completely on them. The reasoning behind the above mentioned articles is clear. In 1945 following the war the feelings were that "most of the forces to be provided by these agreements will come of necessity from the great-power Member states."[33] They were at that time the only powers capable of providing them. Assuming that the bulk of the forces would be forthcoming from the big-powers which could bear the necessary burden, it was these powers which were given the guidance of such forces. The Security Council as such is not properly constituted to deal with the strategic direction of such forces as were to be agreed upon, therefore the framers found it necessary to

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30. Ibid., Article 47, paragraph 2.
31. Ibid., Article 47, paragraph 1.
32. Ibid., Article 47, paragraph 3.
33. Grayson Kirk, "The United Nations Charter: Report on the Third Commission" International Conciliation, Number 413 (Sept. 1945), p. 464.

have this professional military group to take charge of the strategic direction of the forces as have been placed at the disposal of the Council and called out for service under Article 43. "The provisions for these forces are far more categorical and precise than the vague wording of the League Covenant. They are designed to place impressive military power in the hands of the Council in advance of any situation when they may be needed."[34]

The Military Staff Committee duly met in accordance with its directives and issued its first report on April 30, 1947, a report which was to indicate the failure of the entire concept of an international armed force. The five Chiefs of Staff in their report on the general principles to be applied in the creation of a Security Council armed force, were more noticeable in their disagreements than in their agreements. There were at least seventeen points of disagreement in the report of forty-one points among which were the extremely significant questions of the size and composition of the forces. Though this amounted to less than one-half of the report as a whole, the possibilities of the five permanent members forming such a force were proven without foundation. Among the points on which the Committee disagreed were the over-all strength of the forces as to be determined by the Security Council, any changes in this over-all strength, the size of the individual contributions of both land and air forces, the problems of self-defense and national emergencies, questions of withdrawal of such forces following the completion of their tasks, the

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34. Ibid.

degree of readiness for the force, provision of assistance and facilities including rights of passage for armed forces, rights of sovereignty, and stationing of forces not engaged in Security Council enforcement activities. It is possible to trace a general line of demarkation between the members' positions on the various points. This line in most cases follows the cold war division between the Soviet Union on one side and the combination of the remaining four permanent members on the other. There are, of course, several points on which the division tended to follow great power as against lesser power interests but these were definitely in the minority. An excellent example of the extent of disagreement are to be found in the positions of the Soviet Union and the United States on Article 11. Article 11 dealt with the contributions of the various members to the over-all armed forces. The Soviet position on this article was in general: "the over-all size of the armed forces made available to the Security Council will not be too large. Therefore the five states can make armed forces available on the principle of equality... The principle of comparable contributions would lead to advantages in the positions of certain states in the contribution of armed forces..."[35] The position of the United States and the remaining members favored the principle of comparable contribution based on the ability of the nations to contribute and calling the Soviet position unrealistic and over-rigid.

In this way the major part of Article 47 of the Charter fell. The only thing that the Military Staff Committee was able to agree on

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35. "Report of the Military Staff Committee to the Secretary-General", 30 April 1947, United Nations Documents 336, p. 11.

was to meet. It found itself incapable of developing even the general principles by which the armed forces of the Security Council would have to be governed. On August 6, 1948 the Military Staff Committee reported to the President of the Security Council: "Inasmuch as unanimity could not be achieved on the question of the Overall Strength and Composition of the United Nations Armed Forces (Item 1 of the Programme of Work), it was, a priori, impossible to consider Items II and III of the Programme of Work, dealing with the contributions by Member Nations."[36] This impasse in the work of the Military Staff Committee has not been resolved. All of this was inevitable in the divided world which followed the close of the war and the creation of the United Nations Organization and even with the necessary agreements under Article 43, it is difficult to see how this projected system could work. "...it would appear that the failure to create the mechanism for enforcement action envisaged in the United Nations Charter is attributable not to the unilateral opposition of the Soviet Union, but to the bilateral mistrust of the Soviet Union and of the Western bloc..."[37]

This is only half of the story of Chapter VII though. At the present time no nation has negotiated and ratified the necessary agreements with the Security Council to make contingents of armed forces available, and there is little hope that there will be any agreements in the foreseeable future. Here fell the hopes of the founders that

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36. "Letter from the Chairman of the Military Staff Committee to the President of the Security Council," 6 August 1948, United Nations Document S/956.

37. Inis L. Claude, Jr., "The United Nations and the Use of Force", International Conciliation, Number 532 (March 1961) p.354.

they had constructed a true international force for collective security. These provisions remain in the Charter but they do not and probably will not function in any manner. They were not implemented and this the entire character of Security Council enforcement activities has been drastically altered. "It is possible to change a constitution by disuse of its provisions. Perhaps it is not too soon to say that the articles providing for the provisions of armed forces to be on call by the Security Council have been neglected so long that they can almost be considered null."[38]

There are, of course, other provisions of the Charter which have suffered from non-application and non-implementation. Among these are Article 106 which purports to set up an interim method of enforcing Security Council decisions and Article 23, paragraph 1 dealing with election of Members to the Security Council. Like the system established in Chapter VII, Article 106 required unity of the permanent members and when this dissolved, Article 106 became ineffective also. This provision could not be applied as against any major power or as against any lesser power which fell under the protection of a major power. It left few possibilities for action. "The split between the Communist and non-Communist worlds has not only hamstrung the Council, but it has also prevented giving effect to the transitional agreement that was supposed to hold the line until the Organization could swing into action."[39] Article 106 has not fulfilled in practice the function it was intended

38. Chase, op. cit., p. 385.
39. Wilcox and Marcy, op. cit., p. 12.

to perform. This has not been due to quicker action than was anticipated in the concluding of special agreements under Article 43. Failure to make any important progress in the conclusion of these agreements has left the void anticipated by the Charter, but the inability of the permanent members of the Security Council to cooperate has rendered ineffective the provisions of Article 106 for filling that gap. In fact the basic cause of the weakness of the Security Council has been the inability of its permanent members to agree, not the absence of firm commitments on the part of Members to provide forces and facilities under the terms of the special agreement of agreements envisaged in Article 43.

The significant portion of Article 23, in terms of non-application, is its provision for election of non-permanent members with due regard being paid to: "the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization"[40] as well as to "equitable geographical distribution." This means granting Security Council membership to those states that, because of their strategic location, economic resources, or manpower reserves, can make a significant contribution to security. At the same time, consideration should be given to equitable geographical distribution. This is a requirement which seeks to assure eventual representation to all states that are members of the Organization. The decision as to whether these criteria are followed is left solely to the

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40. Charter of the United Nations, Article 106.

Assembly which appears to have determined its selections more on the basis of geographical and ideological representation in recent years than on the character of a member's contribution to security.

A second method by which a constitution can be changed is through the interpretation of its several provisions by the various organs and members. This is the process by which constitutions usually develop to meet an expanding situation without necessitating resort to formal amendments. In the case of the United Nations Charter, this is most likely the more important of the two types of informal amendment which have occurred throughout its short history. The members have engaged in a concerted drive to make the Organization function when its basic premise of unity of the major powers of the world failed. This resulting evolution can be most easily traced through an examination of the three bodies charged with the maintenance of international peace and security and their process of development.

In the case of the Security Council to which was delegated the primary responsibility for such maintenance, the major stumbling block has been its voting rules. Article 27 calls specifically for decisions on substantive matters to be reached by "an affirmative vote of seven members including the concurring votes of the permanent members" and this leaves little ground for maneuvering. It is quite specific in that on the face of the article there is no room for absence or abstention of a permanent member. Over a period of time however, "every one of the Permanent Members has at one time or another admitted the legality of the Council's adoption of resolutions requiring its concurrence despite the fact of its own abstention."[41] The practice of

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41. Stone, op. cit., p. 205.

abstention has assumed chief importance as a device by which some flexibility has been introduced into the rather rigid voting procedure of paragraph 3.

Due to the inability of the Security Council to perform its primary responsibilities, the remaining organs of the United Nations have found it necessary to take upon themselves increasing responsibilities for peace keeping. The most striking examples of this have been in the cases of the Secretary-General and the General Assembly. The basis for the great expansion of these organs in this field given almost exclusively to the Security Council by the Charter lies in a very liberal interpretation of the provisions of the Charter concerning them. There has been a definite shift of responsibilities from the Security Council to the General Assembly and thence to the Secretary-General. While this shift is not illegal per se, it is highly questionable in terms of the original intentions of the founders, but then they expected the Security Council would be able to perform all of its functions with speed and effectiveness. "In meeting these tests there is no convincing evidence that the Assembly has introduced innovations which are specifically prohibited by the Charter. Yet it is obvious that changes have taken place which have gone beyond the expectations and the intentions of the Charter's framers. Every constitution ever written however has had to be'amended by interpretation' under the pressure of events. Constitutions that do not bend are very apt to break. As long as the overwhelming majority of the community favors such a change by interpretation and as long as that change does not inflict undue violence upon the language of the constitution, the change would seem not only

feasible but desirable. When an institution ceases to respond to the will of the great majority, it has lost its vitality as a democratic instrument."[42] In those situations where the Security Council has been able to function effectively it has been allowed to.

The rise of the position of the General Assembly in peace and security matters began before the creation of the Organization. The Dumbarton Oaks proposals were quite specific in this matter. "It would appear, however, from the statements of those who actually participated in those discussions, that the provisions with regard to the organization of peace and security which were incorporated in the Proposals definitely envisaged a clear-cut division of responsibility and functions between the Security Council, in which the Great Powers were to occupy a dominant position, and the General Assembly, the organ of the rank and file of members."[43] These proposals met with considerable modification in the Charter Conference and "the provisions relating to the functions and powers of the General Assembly, however, were extensively modified, and these changes added up to a considerable increase in the potential importance of the rule of that organ."[44] Thus began a long period of evolution for the political role of the General Assembly.

Shortly after the Security Council began its functioning, it became apparent that the necessary unity would not be in evidence. The veto power was being used to further the cold war split and prevent

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42. Haviland, op. cit., p. 167.
43. Leland M. Goodrich, "Development of the General Assembly" International Conciliation, Number 471 (May 1951) p. 241.
44. Ibid., p. 244.

the organization from acting. The original intentions regarding the application of the veto have been explicitly set forth by Cordell Hull in his memoirs where he lists two conditions regarding its use. "In all the discussions with my associates in postwar planning, two important conditions had been understood and repeatedly stated in connection with the veto. The first was that none of the permanent members of the Council would exercise its right of veto capriciously or arbitrarily. It would call this power forth only on a matter of the gravest concern to itself, never on secondary matters and never in a way to prevent thorough discussion of any issue. The veto would be exercised in the same broad cooperative spirit that pervaded the preparatory efforts on the major nations leading toward the creation of the United Nations. It is obvious that the provision was universally intended to aid and facilitate the maintenance of permanent peace by the security organization.

The second condition was that we were thinking largely of the application of the veto power to military and other means of compulsion. In conferring upon the proposed Council the authority to control and direct at least some of the military forces of the member nations to any point where the council believed the exercise of force was required we also had to give the major nations that would furnish such force the right of veto. It was our thought, therefore, that the main focus of the veto would be military and other means of exercising force, such as economic sanctions, and not the numerous other issues that were certain to come before the Council."[45] Neither condition was

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45. Cordell Hull, The Memoirs of Cordell Hull, MacMillan Co. New York, 1945, p. 1663.

fulfilled in practice.

The development through practice of Articles 10 and 14 commenced early. The first instance of the submission of a political problem to the General Assembly came as early as the second part of the first session with the submission of the question of the treatment of Indians in the Union of South Africa. Since that time this practice has experienced a steady expansion. In some instances questions have been submitted directly to the Assembly without prior reference to the Security Council, in others questions have been transferred from the Council as a result of a stalemate in that organ, and in a few instances both the Assembly and the Council have dealt concurrently with the same case though generally not with the same aspects of it. The obvious advantages of transferring a case to the Assembly are the absence of any unanimity rule and the fact that more countries, including important middle as well as small nations, may participate. The disadvantages are that such a move may be considered contrary to the Council's primary responsibility for the maintenance of international peace and security according to Article 24 of the Charter, that it usually antagonizes one or more of the great powers, that it makes possible recommendations by a two-thirds vote of the Assembly which might possibly be contrary to the view of many of the more important powers, and that the Assembly, unlike the Council, does not have the legal authority to use sanctions under Chapter VII of the Charter. The reasoning behind the increased interest of the General Assembly in political affairs where the Security Council is blocked remains essentially the same today as it was at the time the representative of

the United States stated in regard to the Greek question in 1947: "The continued failure, so far, of the Security Council to take effective action in this case because of the Union of Soviet Socialist Republics' veto cannot, in the opinion of the United States Government preclude individual or collective action by States willing to act, so long as they act in accordance with the General purposes and principles of the United Nations. This is particularly true when such individual or collective action is in support of a policy or course of action which has the approval of a clear preponderance of the permanent and non-permanent members of the Security Council. In the case of the blocking of Security Council action by the veto, we are confident that the General Assembly will exercise its powers to the limit for the protection of Greece."[46]

The first real efforts on the part of the General Assembly to deal directly with the problem of the veto were in terms of efforts to influence the Security Council itself to use it strictly in accordance with those conditions noted at San Francisco. The first formal action on the part of the General Assembly to deal directly with the problem of the veto is to be found in the General Assembly resolution dated November 21, 1947 in which the General Assembly requested its special Interim Committee to consider the problem of voting in the Security Council. Based on the report of the Interim Committee, the General Assembly on April 14, 1949 recommended to the permanent members of the Security Council that they seek agreement among themselves upon

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46. Security Council Official Records of 180th Meeting, 12 August 1947, p. 1910.

what possible decisions by the Security Council they might forbear to exercise their veto, when seven affirmative votes have already been cast in the Council, giving favourable consideration to the list of such decisions contained in conclusion 2 of part IV of the report of the Interim Committee. The recommendations of the General Assembly were unable to change the voting situation in the Security Council. They were aimed more at the symptoms than the cause. "The over-all problem of the 'veto' is the organizational manifestation of the fundamental lack of mutual trust among nations. Gradually the Assembly has lost hope of reforming the Security Council directly and has turned to exploring various means of strengthening the Assembly's own authority in the political field."[47]

The two most noteworthy attempts made to enable the General Assembly itself to meet increasing responsibilities in this field have been the establishment of the Interim Committee in 1947 and the adoption in 1950 of the Uniting for Peace resolution which lay down new procedures for meeting aggression. In assessing the Assembly's role in all of these attempts to prevent aggressive intervention one must remember that the plenary organ was not originally designed to deal with matters requiring the collective use of forces. Yet because of the inability of the Security Council to take action with respect to Greece and the Communist Chinese intervention in Korea, the only alternatives were either to turn to the Assembly or allow the United Nations to be entirely paralized by the 'veto'.

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47. Haviland, op. cit., p. 154.

The General Assembly resolution 111(II) became the first major effort in this General Assembly build-up process. This resolution established: "for the period between the closing of the present session and the opening of the next regular session of the General Assembly, an Interim Committee on which each Member of the General Assembly shall have the right to appoint one representative."[48] This committee was to consider matters referred to it by the General Assembly, those disputes or situations proposed for inclusion in the agenda of the Assembly, methods to be adopted to deal with the general principles of cooperation in the maintenance of international peace and security, whether there is need for the summoning of a special session of the General Assembly and to conduct investigations it deemed necessary and useful. Thus the Assembly took the first step in preparation for increased responsibility in political matters by insuring its availability between regular sessions. Until this time the Security Council was the only body designed to function continuously. In accordance with the letter of the Charter, the resolution reaffirmed the predominant position of the Security Council in matters affecting the peace and security of the world. This Interim Committee was reaffirmed and re-established by General Assembly resolution 295 (IV) of November 21, 1949 with expanded powers. It has fallen into disuse since that time as its functions became institutionalized and improved upon in 1950.

Having made this encroachment into the work of the Security

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48. General Assembly Resolution III (II) of 13 November 1947, United Nations Document A/519, p. 15.

Council, there can be little surprise in the Uniting for Peace resolution which followed the outbreak of the Korean crisis. The Security Council, by a chance circumstance (the absence of the Soviet representative) was able to adopt three resolutions which led to the establishment of a fighting force under United Nations sponsorship. The legality of this resolution has been questioned on several occasions but the force could not have been said to actually violate the terms of the Charter. They are instead a rather liberal interpretation of the provisions banning the use of force in the settlement of international disputes. This force was not the magisterial force authorized the Security Council under Chapter VII. It was an entirely voluntary force on the part of the sixteen member nations, established to restore the peace and territory of Korea. What is significant here is not the legality or even the final results of this venture, but the lessons which were learned for it is doubtful that it will be repeated.

"The Uniting-For-Peace resolution was more or less a reflection of the immediate environment of the Korean crisis, but it was also part of the main stream of basic institutional change to which it at the same time contributed."[49] This was an attempt to institutionalize the actions and procedures of a crisis. The General Assembly resolution of November 3, 1950 duly noted the failure of the Security Council to discharge its responsibilities but stated that this "does not relieve Member States of their obligations or the United Nations

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49. Keith S. Petersen, "The Uses of the Uniting for Peace Resolution since 1950", International Organization, (Spring 1959) 13:219.

of its responsibilities under the Charter to maintain international peace and security."[50] The basic provisions of the Uniting For Peace resolution called for the summoning of the General Assembly into emergency special session within twenty-four hours of such a request therefore, established a Peace Observation Commission to observe and report on situations where there exist international tensions, invited Members to survey their resources to determine what assistance would be supplied in case of necessity and established a Collective Measures Committee to study methods "which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defense and regional arrangements."[51] The over-all effect of this resolution was to provide for the transfer of questions on which the Security Council could not reach a decision and thereby fail to fulfill its primary function. There is now scarcely any limit to the means which the Assembly can employ if it chooses. The only important limitation is that the Assembly may make recommendations only, not binding decisions of the kind that the Security Council may make under Chapter VII. Thus the effectiveness of the Assembly's efforts depends on the degree of the Members' compliance in each case. Though ostensibly preserving the primary responsibility of the Security Council in security matters, the Uniting for Peace resolution was in fact based on the postulate that the Security Council would

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50. General Assembly Resolution, 377I(V) of 3 November 1950, United Nations Document A/1775, p. 10.
51. Ibid.

almost certainly be paralyzed by Soviet obstructionism and that, in such an eventuality, the General Assembly could properly act in its place. The Uniting for Peace resolution registered the high point of a trend initiated as far back as September 1947 with the first proposals for an Interim Committee to sit between normal Assembly sessions.

The additional question now arises as to whether it is possible to successfully institutionalize a situation such as the Korean crisis. The creation and operation of the force in this situation was entirely dependent on the attitude and interests of the states directly concerned in the specific circumstances, therefore any duplication of this experience would depend on the special aspects of the crisis which arises. Such a force in which contingents of the major powers found themselves involved in opposition to either the forces or the interests of other major powers has not again occurred.

It would now appear that the Uniting for Peace Resolution has repeated the experience of the Charter. Its effective contribution has been the provision of an instrumentality through which the purposes of the Charter may be pursued, in this instance, the emergency session of the General Assembly. The detailed provisions of the Uniting for Peace Resolution have remained in large degree inoperative. There has been an apparent inclination not to use the Peace Observation Commission even when it would seem both logical and possible to do so. Instead the tendency is to set up special observation groups under general grants of authority to the Secretary-General. The Collective Measures Committee met with problems also. A good summary of its accomplishments is to be found in the report of the Committee

presented to the sixth session of the General Assembly; "In the time at its disposal, the Committee has not been able to do more than make a first general survey of the problems connected with the organization of United Nations military resources, and it is fully aware that its report on this large and complex subject is in no sense complete."[52] As of September 30, 1951, the responses of the Member Nations on their support of the resolution numbered some thirty-eight which included some four negative and five simple acknowledgements. "The 'transfer' and 'emergency session' aspects of the Resolution have been recently revived and now are probably an integral part of the United Nations system, but ... the other elements of Uniting for Peace are now more or less inactive because of an early decline in their use or lack of any practical use at all."[53] Since 1960 even these elements would appear to be declining in importance as the Security Council strives to reassert its position. It was able to provide for United Nations peace restoration actions in the Congo and Cyprus crises though not the type of action originally envisaged in the Charter.

The Korean crisis was not only significant in terms of the history and development of the General Assembly but it was an early manifestation of the role which the Secretary-General would come to assume in United Nations affairs. "The constitutional implications of the Korean conflict affected other U. N. organs besides the

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52. "Report of the Collective Measures Committee" in General Assembly Official Records VI, United Nations Document A/1891, p. 24.
53. Petersen, op. cit., p. 220.

Security Council and the General Assembly. The Russians contended that the behaviour of the Secretary-General throughout had been that of a tool of British and American diplomacy."[54] That the Secretary-General should have some role in the political functions of the organization was evident by the inclusion of Article 99 in the Charter. "The reference to political functions, which are explicit in Article 99 of the Charter, makes it quite clear that the Secretary-General is something more than an administrative officer or anonymous civil servant. He was intended to be, and has become, a more powerful official than was the Secretary-General of the League of Nations. He can initiate proposals for action and suggest to the world or to an organ of the United Nations the line which policy should follow."[55] The further expansion of this office is in general based on two major functions. Article 98 provides that the Secretary-General "shall perform such other functions as are entrusted to him by these organs."[56] This article in conjunction with Article 99 authorizing him to bring matters to the attention of the Security Council cover just about every situation in which the Secretary-General has had occasion to exercise his political functions. In addition the Secretary-General is the only official within the organization who represents all of its organs and members. The secretariat is the only place where problems, programs and policies can be consistently viewed in United Nations terms rather than national and ideological terms.

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54. H. G. Nicholas, The United Nations as a Political Institution, Oxford University Press, London, 1961, p. 53.
55. F. R. Scott, "The World's Civil Service" International Conciliation, Number 496 (January 1954) p. 272.
56. Charter of the United Nations, Article 98.

The expanded role of the Secretary-General has come about mainly through delegation of functions by the General Assembly and the Security Council when these bodies find themselves unable to take the required action. The General Assembly is far too large and complicated a body to be capable of rapid and effective action in the face of a crisis whereas the Security Council has not usually been able to marshall the necessary unity and support for effective action. This latter body has not been able to establish its magisterial forces to support decisions. This leaves only one organ small enough to be capable of taking any kind of effective action -- the Secretariat through the Secretary-General. The nations have been willing to entrust this power to the Secretary-General because this office has built up a history of independence, impartiality and objectivity and because the holders of this office have risen to the challenge. "There were, then, two parallel and related trends. First policymaking organs were increasingly entrusting the Secretary-General with broad diplomatic and operational functions; second, the Secretary-General was using all the resources of his office in the exercise of independent initiatives designed to further the purposes and principles of the Charter."[57] Hammarskjold had a dynamic concept of the role of the Organization and its Secretary-General which he expressed more vividly through his actions than through his words.

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57. Sydney D. Bailey, "The Troika and the Future of the United Nations," International Conciliation, Number 538 (May 1962), p. 44.

How has this been accomplished? When it has been impossible to muster sufficient votes in the Security Council or the General Assembly for any proposal of substance, members have usually been content to adopt one of two expedients: avoid substantive decisions by such respectable diplomatic devices as postponement, or transfer the responsibility for action to the Secretary-General by declaring in broad terms the objectives to be achieved. Examples of the latter are easily found. On the fourth of November, 1956, the Assembly requested "the Secretary-General to investigate the situation caused by foreign intervention in Hungary, to observe the situation directly through representatives named by him, and to report thereon to the General Assembly at the earliest moment, and as soon as possible to suggest methods to bring an end to the foreign intervention in Hungary."[58] On that same date the Assembly requested: "as a matter of priority, the Secretary-General to submit to it within forty-eight hours a plan for setting up, with the consent of the nations concerned, of an emergency international United Nations force to secure and supervise the cessation of hostilities in accordance with all the terms of the aforementioned resolution."[59] Later in August of 1958 the Assembly requested the Secretary-General "to make forthwith, in consultation with the Governments concerned and in accordance with the Charter, and having in mind Section I of this resolution, such

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58. General Assembly Resolution 1004 (ES-II) of 4 November 1956, A/3325, p. [illegible].
59. General Assembly Resolution 998 (ES-I) of 4 November 1956, A/3354, p. 2.

practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances and thereby facilitate the early withdrawal of the foreign troops from the two countries."[60]

When the Security Council found itself once again able to render a decision on such matters, there was no appreciable change in the enforcement method adopted. On 14 July 1960 the Council decided to "authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations the national security forces may be able, in the opinion of the Government to meet fully their tasks."[61] In other cases the policy-making organs have merely handed problems to the Secretary-General by concluding consideration of the matter with an understanding that the Secretary-General, in the normal course of his duties, would give the matter attention. In both cases the result is the same in regard to the responsibilities of that office.

This resulting increase in the responsibilities of the Secretary-General and Secretariat has not been confined to the political field however. There has also been a remarkable expansion of economic and social programs. Originally, the main task of the Secretariat in

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60. General Assembly Resolution 1237 (ES-III) of 21 August 1958 United Nations Document A/3905.
61. Security Council Resolution of 14 July 1960, United Nations Document S/4387.

economic and social affairs was to service the policy-making organs. At an early stage, however, the Secretariat was asked to make studies and undertake research. By 1950 it had been given responsibilities for substantive field operations, and these operations have increased in extent and in importance. Only in relation to dependent territories has there been a contraction in the responsibilities of the United Nations. This substantial increase in the executive responsibilities of the Secretary-General and the Secretariat has not been accompanied by the necessary expansion of the machinery with which that Organ must work and the office has been greatly strained as a result. Due to its increasing involvement in military operations, one of the more crucial needs is for military specialists to advise the Secretary-General on such matters. The Secretariat is not equipped for operating in the military area in the least for this was to be the sole responsibility of the Security Council with its Military Staff Committee.

The expansion of the Secretariat and more especially the office of the Secretary-General has not gone unnoticed. The Soviet Union began a campaign against any strengthening of the Secretary-General at the expense of the Security Council, which it can control, as early as 1950 when it became evident that the Secretary-General was to be something more than an administrator. This drive was climaxed by the recent proposal of Chairman Khrushchev to abolish the position of the Secretary-General and institute instead "a collective executive body of the United Nations comprising three persons each of whom would represent a certain group of states."[62] These three groups of

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62. United Nations Review, (November 1960) 7:36.

states were to be the Western Alliance, the Soviet States and the Neutralist Bloc. That this proposal failed is indicative of the desires of the member nations that the United Nations should somehow function wherever and whenever possible. In the position of the Secretary-General, the organization at last has some degree of flexible and intelligent means of adjustment to the needs of the international community.

Since its inception, the United Nations has witnessed two separate but related trends in its constitutional development. These are a definite shift in the early 1950's of the peace enforcement decision-making process to the General Assembly followed by a return to the Security Council with the decline in great power direct involvement. "This year has seen a further return of the Security Council to its central role as the organ of the United Nations which carries primary responsibility for peace and security. Thus, the question of South Africa and especially the question of the Congo have been major tasks with which the Council has been exclusively seized. The reason for this return to the Security Council from the General Assembly is, naturally, that both these questions have been of a nature which has to a degree placed them outside the conflicts of today between the main power blocs. The shift of the emphasis back from the General Assembly to the Security Council has, however, not led to a change of working methods, as the Council, following the recent procedures of the Assembly, has used the services of the Secretariat and the Secretary-General as its main executive agent."[63]

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63. Dag Hammarskjold, "Introduction to the Annual Report of the Secretary-General" General Assembly Official Records XV, United Nations Document A/4390/Add. 1., p. 3.

This leads into the second trend, the steady development of the role of the Secretariat. This organ has now established itself as a true executive for the Organization.

Has the character of the United Nations Organization been qualitatively changed by these informal "amendments?" The purposes of the Organization have not changed in the least. They remain to maintain international peace and security, the development of friendly relations among nations and the achievement of international cooperation in the related fields of economic, social, cultural and humanitarian problems. The only substantial change has been that the methods of achieving these purposes, especially in the field of peace and security, as established in the Charter, being highly unrealistic, have generally failed. That the Organization functions at all in these questions is to be attributed to the ingenuity of its Members in finding means of change short of formal amendments in the face of big power disunity.

There are at least four very basic changes in the Character of the Organization. In the first place, those peace enforcing functions which were to be performed by the big powers are now performed almost entirely by the smaller powers. This is evident in the composition of the various United Nations forces. The concept of using the major powers to maintain the peace through means of uniting their collective strengths in the application of pressure has given way to the concept of big power exclusion. The goal of this current concept is the maintenance of the peace by keeping the major powers from becoming involved. The recent disputes in which the United Nations has taken

any type of enforcement action are such that this new concept is possible. They have been in large part of the civil war variety in which the chief protagonists in the cold war are not directly involved. This method of preserving the peace was quite definitely not intended by the framers of the Charter at San Francisco.

A second change lies in the unexpected development of the functions and authority of the Secretary-General. The powers given this office in the Charter do not on their face indicate his true role as the guiding light of the Organization. This has been a result of the judicious combination of personal initiative and organizational necessities.

A third change deals with the expanded position of the General Assembly. By means of the introduction of this organ into the peace and security aspects of the Organization's functions, it far exceeds the intentions of the big power framers as specified in the Dumbarton Oaks proposals, as well as those of the small power delegates at the San Francisco Conference. History has tended to force the United Nations into the pattern of the League of Nations as far as the functions of the Security Council and General Assembly are concerned.

Fourth and closely related to the first three changes one must note the greatly changed position of that body to which is entrusted the maintenance of peace, the Security Council. Over the course of time this body has lost the major portion of its enforcement machinery through lack of unity of the permanent members. It has only recently regained some of the stature with which it was endowed by the framers, however, this body no longer possesses those

magisterial powers once thought so important. The Security Council now finds itself working through the Secretary-General instead of through its Military Staff Committee. The character of its forces are not those authorized in Article 43.

The founding fathers saw as the cause of the failure of the League of Nations its decentralized processes of arriving at a finding of violation of obligations or breach of the covenant and its voluntary sanctions. They sought in the Charter of the United Nations to make this Organization a strongly centralized one in which a small body consisting of all of the great powers as permanent members would render binding decisions designating specific violations of international obligations. This body was given extremely broad powers once such a determination had been made and each Member of the Organization was to be bound by such decisions. The instrument set up specific machinery for enforcement to put teeth into the enforcement action. What has actually occurred as far as the basic character of the Organization is concerned is that due to the failure of this centralized system of peace enforcement, the United Nations has retreated to a position which might possibly be said to be more decentralized than that of the League. Under the League there were definite obligations to take certain measures once a member had determined a resort to war in disregard of its covenants. Under the United Nations even this has fallen. The Members are obligated only when the Security Council has made the appropriate determination under Chapter VII and, as has been seen, this happens very seldom. Under the League it was not possible for one member nation to block

the action of the Organization altogether whereas under the United Nations this also can be done providing at least one permanent member opposes the proposed action.

Current methods of peace restoration and maintenance consist of two distinct steps neither of which constitute any obligations on the Members. First a determination is made as to whether action should be taken by agencies of the United Nations. This will be made by the Security Council if possible, otherwise by the General Assembly under its transfer provisions. Inherent in this determination is the decision on whether the necessary action lies within the purposes of the Charter. No obligations follow from this determination as would have been the case under Article 39. Once the first step has been completed, the focus of action shifts to the Secretary-General who is charged with taking the appropriate action. Any forces necessary will be the result of voluntary contributions rather than any obligations. Thus the total effect of the several constitutional changes within the United Nations is to do away with the obligatory centralized nature of the Organization and substitute a rather loosely coordinated system, for this is now the function of the Organization -- to legitimize and coordinate the activities of its Members rather than to command.

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